UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
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UNITED STATES OF AMERICA,

v. 13 CR 345(LGS)

ANTOINE CHAMBERS,

Defendant.

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New York, N.Y.
September 8, 2014
11:10 a.m.

Before:

HON. LORNA G. SCHOFIELD

District Judge

APPEARANCES

PREET BHARARA
United States Attorney for the
Southern District of New York
NEGAR TEKEEI
SANTOSH ARAVIND
Assistant United States Attorneys

JOSHUA LEWIS DRATEL
Attorney for Defendant

(Case called)

THE COURT: Good morning.

So this was originally to be a suppression hearing that is now, obviously, not going to happen because Mr. Brown has pleaded guilty, but there are many motions that are open and outstanding. So my plan during this conference is to go through the motions basically in the order that they were filed so that we know what we still need to deal with and what we don't, whether the parties' positions have changed, and so forth.

The first motion is Mr. Glisson's motion to preclude evidence. That was Docket Number 43, and I will deny that as moot since Mr. Glisson has now pleaded guilty.

The next motion is the government's motion in limine. It is, actually, three motions. It is Docket Number 46. I will take them in order.

The first application was to introduce Brown's post-arrest statement, and the government originally had asked to admit the statement with redactions, and Mr. Chambers had asked to admit the statement in its entirety without redactions as an exculpatory document or, in the alternative, to be severed.

Let me hear from the government first. Are you withdrawing this motion, or are you still seeking to introduce Mr. Brown's post-arrest statement?

MS. TEKEEI: Your Honor, may I have one moment, please?

THE COURT: Yes, sure.

Then I will ask Mr. Dratel what his position is.

MS. TEKEEI: Yes, your Honor.

THE COURT: Could you speak into the mike, please.

MS. TEKEEI: Yes, your Honor. I apologize.

We withdraw that motion.

THE COURT: The government has withdrawn the motion. Mr. Dratel, you had basically taken the position that you wanted the statement admitted in its entirety. Is that still your application?

MR. DRATEL: Yes, your Honor.

THE COURT: So let me tell you what I would like to do with respect to that one. We really haven't had any briefing or argument on this issue in this posture, so let me ask the government whether it objects to the admission of Mr. Brown's statement.

MS. TEKEEI: Yes, your Honor. It is hearsay.

THE COURT: Okay. So what I'm going to do is ask for simultaneous letter briefs from the parties, due at the close of business Thursday; and I would also like the government to provide me with a copy of Mr. Brown's statement. I don't know if it has been provided to the other defendants; if so, I may be the only person who doesn't know exactly what it says, but

it will be very helpful if I did.

Let me tell you what my thinking is just to help you in educating me. If the government calls Mr. Brown -- and I won't ask you to commit one way or the other right now -- then certainly Mr. Dratel can try to impeach him with the statement, and the statement may be independently admissible under Rule 801(d)(1). I don't think there is any controversy about that.

The question is if the government does not call Mr. Brown and Mr. Chambers wants to introduce the statement, then the question is whether Mr. Dratel is required to call Brown as a witness, and he will be available as a witness, having pleaded guilty, or whether Mr. Chambers may introduce just the statement without calling him. My current thinking is that I am inclined to admit the statement without calling the witness. This is not a ruling. I'm just telling you my thinking, so you'll have a way to address this in a way that's helpful.

The first question is, obviously, whether the statement is hearsay. We all know, under Rule 801, hearsay is an out-of-court statement offered for the truth. I haven't seen the statement but I gather Mr. Brown doesn't mention Mr. Chambers. So we're not talking about a statement; we're talking about an absence of a statement. And it is not offered for the truth of the matter asserted, it is offered for the

truth of the matter not asserted. Looking at the 801 definition, it doesn't appear to be hearsay. Case law on that subject would be of interest to me.

Then, I look, by analogy, to Rule 803(7), which provides an exception to the hearsay rule in this kind of circumstance for business records, and 803(10), which provides a similar analogous exception to the hearsay rule for public records. And these rules would seem to suggest that the statements are hearsay, requiring an exception. However, I read the advisory committee note, which says actually or implies that the absence of information, in fact, is not hearsay, and that 803(7), for example, was added just for clarification but not because it was actually needed to avoid inadmissibility because of hearsay. So, based on that, and particularly the advisory committee note, it seems to me that it is not hearsay.

Now, the question is, even if it were hearsay, is there some other basis by which a hearsay exception would apply. 803(7) and 803(10) don't apply because they are very specific to business records and public records; and since Mr. Brown is available, the exceptions in Rule 804 don't apply, but I believe that even if the statement is hearsay, 807, which is the catchall provision for admitting hearsay, may provide a basis for its admission.

Let me just note, Mr. Dratel, you know, of course,

that Rule 807 requires notice from you, so I would suggest you put that notice in your letter. But my thinking on 807 is that, as a matter of fairness, I am inclined to believe that the statement is reliable and the government should not be able to object to its admissibility because it previously offered the statement, although in a redacted form, but in a form that still did not contain any idea of Mr. Chambers, and the government was prepared to offer it in a trial that included Mr. Chambers. So it seems to me that it would be unfair for the government to take the position now that the statement is not reliable.

I am also concerned about the reliability of in-court testimony, in contrast. When the trial occurs, Brown will be awaiting sentence. He may be influenced by the perceived need to curry favor with the government. So for these reasons, it seems to me that even if the statement were hearsay, Rule 807 might well apply.

As I said, that's not a ruling. That's just my thinking. If you can help me with the analysis or with case law, I would be very interested; and as I said, I would like that by close of business Thursday. That is the first of the government's motions in limine.

The second was a motion to introduce Mr. Glisson's and Mr. Chambers' prior convictions under Rule 404(b) or 609(a), and I assume that the government no longer wants a ruling as to

Mr. Glisson but does want a ruling as to Mr. Chambers.

Is that right?

MS. TEKEEI: That is correct, your Honor.

THE COURT: So, let me turn to that. The question is whether to admit or, in the alternative, allow cross-examination of Chambers, should he take the stand, about prior convictions; and my ruling is that the government's motion is denied. That information will not be admissible on direct, nor can it be the subject of cross-examination, and let me explain my ruling. Rule 404(b) evidence of "crimes, wrongs, or other acts" is evaluated in this circuit under an inclusionary approach that allows evidence for any purpose other than to show a defendant's criminal propensity. *United States v. McCallum*, 584 F.3d 471, 475 and 476, Second Circuit, 2009. Courts may admit evidence of other acts by the defendant if the evidence is relevant to an issue at trial other than the defendant's character and if the risk of unfair prejudice does not substantially outweigh the probative value of the evidence. That is *United States v. Morrison*, 153 F.3d 34, at 57, Second Circuit, 1998.

Here, evidence of Mr. Chambers' prior convictions appears to be advanced for no purpose other than to prove criminal propensity. Nothing about the prior convictions is similar to the current charges except that they involve violations of the narcotics laws. Also, the government's

reason for introducing the convictions is that "The circumstances leading to Chambers' prior narcotics convictions tend to establish that both men were knowledgeable about the narcotics trade, that they had a motive to commit the March 25 robbery of the primary victim, a known drug dealer, and that they, rather than some other individuals, would have been likely to commit such a crime." This is essentially an admission that the government seeks to use the evidence to establish criminal propensity, which as I said is not proper under Rule 404(b). In addition, evidence of Chambers' prior convictions is far more prejudicial than probative.

This reasoning is equally applicable to the government's application to cross-examine Chambers about his prior conviction under Rule 609(a) if he decides to take the stand. 609(a)(1), which governs impeachment by evidence of criminal conviction, also provides that a prior conviction "must be admitted if the probative value of the evidence outweighs its prejudicial effect to the defendant."

Trial judges have broad discretion in making determinations under Rule 609(a), and the "prime factor to be considered is the probative value of the prior conviction as to the witness's veracity." *United States v. Ortiz*, 553 F.2d 782, 784, Second Circuit, 1977. "Where the prior conviction is for the same offense as that at issue, the potential for prejudice is greatly enhanced." *United States v. Puco*, 453 F.2d 539 at

542, Second Circuit, 1971.

Where, as here, the prior convictions are generally for the same offense, the potential for prejudice is high. But where the similarity between the prior convictions and the current alleged offense ends there, the probative value is low. Consequently, the probative value of the prior convictions does not outweigh its prejudicial effect to Mr. Chambers; and the application to introduce in any fashion his prior convictions is denied. So that is the second of the government's motions in limine.

And the third is a motion to preclude cross-examination of Detective Deloren about certain statements and findings of Judge Batts in a prior proceeding.

What is the government's position in light of Mr. Brown's guilty plea? I don't know if Detective Deloren is relevant to the investigation of Mr. Chambers, whether you are still pursuing that motion or not.

MS. TEKEEI: Yes, your Honor. He still may testify.

THE COURT: Okay. Mr. Chambers had not opposed that motion, but the other two defendants had, and I presumed that Mr. Chambers was relying on that opposition.

MR. DRATEL: Yes, your Honor.

THE COURT: Would you like to oppose that motion?

MR. DRATEL: Yes, your Honor.

THE COURT: So I'm prepared to rule on that, but let

me understand from the government, can you give me a better idea, as I need it for my ruling, what Detective Deloren will testify about Chambers. I understood he was going to testify about the search and the statements that Mr. Brown gave, but I don't know what it is he has to say about Mr. Chambers.

MS. TEKEEI: Your Honor, may I have one moment?

THE COURT: Of course.

MS. TEKEEI: Your Honor, Detective Deloren was the initial case detective. He provides the context for how the investigation began and the background to the robbery. He interviewed the victims and the witnesses in the initial instance, and he also interviewed other witnesses and other individuals, including, for example, Mr. Chambers' family members and his girlfriend, Ms. Dunbar, and so there are various points and various, I guess, background information that we would seek to elicit through Detective Deloren's testimony.

THE COURT: Okay. So, basically, he will testify about the robbery and the collection of evidence following the robbery. Is that more or less right?

MS. TEKEEI: Yes, your Honor. And the sequence of events as the investigation unfolded.

THE COURT: Okay. Let me address this motion. It is the government's application for a ruling to preclude cross-examination of Detective Deloren regarding his testimony

in an unrelated 2006 case in which he was found not credible and his testimony was suppressed. Let me first summarize the relevant facts. The testimony and credibility determination at issue occurred in a case called *United States v. Cooper*, before the Honorable Deborah Batts. During the hearing, Detective Deloren was questioned about the circumstances surrounding the detention and search of the defendant and the defendant's post-arrest statements. Detective Deloren testified that the defendant appeared "nervous" and was sweating; that he appeared to be concealing something under his T-shirt and that he volunteered that he had a gun on his person.

Judge Batts concluded that it was "not clear that Officer Deloren, from his own testimony, was in a position to observe what he said he observed on the defendant. She also questioned whether Detective Deloren could see that the defendant was nervous given that it was nighttime. Detective Deloren was using a flashlight, and he only "leaned down for a matter of seconds." In addition, Judge Batts found that it was "not credible" that Mr. Copper would just voluntarily say, as he's getting out of the car to be searched, "Anyway, I have a gun." She considered the police officer's testimony to be "troublesome."

The government argues Detective Deloren's testimony and Judge Batts' determination, first, is inadmissible under Rule 608(b), and second, is hearsy under Rule 801, and it is,

finally, not relevant.

Rule 608(b) of the Federal Rules of Evidence states, "Except for a criminal conviction under Rule 609, extrinsic evidence is not admissible to prove specific instances of a witness's conduct in order to attack or support the witness's character for truthfulness. But the Court may, on cross-examination, allow them to be inquired into if they are probative of the character for truthfulness or untruthfulness of the witness."

In *United States v. Cedeno*, 644 F.3d 79, Second Circuit, 2011, the Second Circuit identified seven non-exhaustive factors to be considered by courts assessing the probative value and relevance of past judicial credibility determinations under 608(b):

(1) "whether the prior judicial finding addressed the witness's veracity in that specific case or generally";

(2) "whether the two sets of testimony involved similar subject matter";

(3) "whether the lie was under oath in a judicial proceeding or was made in a less formal context";

(4) "whether the lie was about a matter that was significant";

(5) "how much time had elapsed since the lie was told and whether there had been any intervening credibility determination regarding the witness";

(6) "the apparent motive for the lie and whether a similar motive existed in the current proceeding"; and

(7) "whether the witness offered an explanation for the lie and, if so, whether the explanation was plausible."

Applying those factors here, I conclude that cross-examination of Detective Deloren regarding his prior testimony in Judge Batts' credibility determination is permissible. We're talking here about cross-examination. Five of the *Cedeno* factors weigh in favor of permitting the cross-examination. First, the credibility finding in *Cooper* addressed both Detective Deloren's credibility in that case and his veracity generally. Judge Batts questioned the truth of his specific statements, but she also concluded that she did not believe the police officers and found their version of events troublesome. The broader implication is she had doubts both about the detective's specific statements and the overall veracity of the testifying police officers, including Detective Deloren. Second, the testimony in *Cooper* was similar to the testimony anticipated here to the extent that, in both, Detective Deloren did and would testify about the collection of evidence after the arrest. Third, the "lie" in *Cooper* was made under oath in a judicial proceeding. Fourth, the parties agree that Detective Deloren's testimony concerned significant matters.

The fifth factor is the only factor that I believe

weighs against the admission of testimony in question since approximately eight years have passed between the testimony in *Cooper* and the present case. As for the sixth factor in both *Cooper* and this case, Detective Deloren is testifying on behalf of the government in support of criminal charges brought against the defendant, leading to an inference that his motive is the same in both cases. As for the seventh factor, the parties agree that it is impossible to evaluate any explanation for the lie since the government's position is that Detective Deloren did not lie in the prior proceeding. On the whole, then, *Cedeno* factors weigh in favor of permitting cross-examination concerning Detective Deloren's prior testimony and Judge Batts' credibility determination.

The government argues that testimony concerning the detective's prior testimony and Judge Batts' credibility determination is inadmissible hearsay pursuant to Rule 801. The Second Circuit expressly declined to reach this issue in *Cedeno* and the cases that followed it. Whether or not Judge Batts' credibility determination is hearsay, it is not in any event admissible because of the proscription in Rule 608(b) that I just described. In other words, it is not admissible as direct evidence. Cross-examination, however, is never hearsay as it is not evidentiary and it is not offered for the truth. Moreover, it is expressly allowed under Rule 608(b). Accordingly, the government's argument is rejected.

The government also argues the probative value of Judge Batts' statement is "minimal at best." I disagree. Judge Batts' statement about Detective Deloren's credibility is very relevant to his reliability as a government witness in a case where he is testifying about a crime, an alleged crime, and the collection of evidence relating to that crime.

So for the foregoing reasons, the government's motion is denied. I will allow cross-examination concerning Judge Batts' credibility determination should Detective Deloren take the stand. So that is the third of the government's motions in limine, and that's Docket Number 46.

Next, let me turn to Chambers' motion to dismiss Count three of the indictment. I will deny that motion for reasons that I will explain in a written opinion that should be published in the next couple of days.

Fourth is Brown's motion for suppression of his post-arrest statements and bill of particulars. I will deny that as moot.

Fifth is something I just received. The government made a letter motion for an order that the U.S. Probation Office be permitted to disclose to the government the following in its file regarding Chambers for the period of his three-year supervision.

Does anyone know when that began? It said in the letter that it was transferred to the Southern District of New

York, but I wasn't sure if that is also when it began or if it had begun at some earlier time.

MR. DRATEL: It began November 2011, I believe, your Honor, but in New York, November 2012. Initially it was in Pennsylvania.

THE COURT: Thank you.

MS. TEKEEI: Your Honor, we had prepared to file as part of our new motions in limine a briefing on this issue, just so your Honor is aware, in light of Mr. Dratel's opposition.

THE COURT: I was not going to rule on it today. Mr. Dratel gave me a fairly robust opposition. If there is anything you would like to say today in addition to what you'll put in your written papers, I'm happy to hear that and happy to hear from Mr. Dratel, or you can just rest on your papers. I'm sure Mr. Dratel will respond to them.

MR. ARAVIND: Your Honor, I think it makes sense for us to rest on our papers, just so that your Honor can see the cases that we cite. We believe that both the Supreme Court and the Second Circuit has ruled in favor of the government's application, and we'll be submitting that authority to your Honor.

THE COURT: Okay. Thank you.

The one thing I had a question about -- I confess I haven't read the cases, I'm not ruling -- but at least

intuitively the Fifth Amendment argument seems like a compelling argument. On the other hand, we also all know that probation gathers evidence from lots of places other than the defendant, and so it would seem that, at the very least, information provided by sources other than the defendant would not be subject to many of the arguments that Mr. Dratel made.

So Mr. Dratel, would you like to talk about that now or address it in your responsive papers? Or you can do both.

MR. DRATEL: I would like to address it in the responsive papers. I would like to flag an issue first, which is that as a predicate for all this, I think it would be the admissibility of the probation officer's testimony; in other words, the 403 issue for us, which we flagged but didn't address because the government hasn't proffered the basis for admissibility to get around 403.

THE COURT: I understand. I assume the government will make both arguments, not only that it wants the file but it wants to call a probation officer, and then, Mr. Dratel, you will respond.

The government, you said you thought you would be filing today; is that right?

MS. TEKEEI: Yes, your Honor. The current briefing schedule contemplates any additional motions in limine being filed today.

THE COURT: So I assume that that schedule also sets

out when responses are due.

MR. DRATEL: Your Honor, because of the change in the landscape since the last time we were together, if I could -- and also because of the other letter that is due Thursday -- if I can get until Wednesday for our motions in limine. We're preparing them, but there may be some -- I want to make sure that we haven't left any out that I thought either other counsel were going to do or that now become relevant in the absence of the other defendants.

THE COURT: The problem is, then, I think I had given the government a week, is that right, for responses? My problem is our final pretrial conference is on, I think, the 22nd, is that right, and I want to be sure that I have enough time to consider the motions?

MR. DRATEL: How about tomorrow?

THE COURT: Tomorrow is fine, yes. If the government wants a one-day extension, that's fine, as well.

MS. TEKEEI: Yes, thank you, your Honor.

THE COURT: Okay. Thank you.

All right. Finally, number 6, I have letters from the government and Mr. Chambers, Dockets 138 and 139, about the schedule for the production of 3500 material and the government's anticipated motion for a related confidentiality order. So what I would really like first is, Mr. Dratel -- I will hear from you first -- you seem to have, perhaps, the best

recollection of what the state of play was about discussions about 3500 material. If you would just recount that, and then I will hear from Ms. Tekeei and see if it comports with her recollection.

MR. DRATEL: The question that we had at the August 14th conference was when 3500 material would be produced. I don't think we had a specific date, although if we did the math from when the trial date was supposed to be for today and we just move that forward, I think that would end up being the 12th of September, I think is the date that I had moved it to.

THE COURT: I thought it was going to be the Friday before the trial, which would have made it the 19th, or is that just wrong?

MR. DRATEL: Maybe there was one week I missed there. So the 19th. And the government had a question about security and safety issues of civilian witnesses, and I raised the prospect of a protective order that would resolve that issue.

THE COURT: I think you said we would like the information earlier. She said we're concerned about safety issues.

MR. DRATEL: Then the government circulated a protective order. I had a couple of revisions that I proposed that the government apparently accepted, but the impediment was that Mr. Brown's lawyer had a categorical objection to a

specific paragraph, which I do not have a categorical objection to. Obviously, having made the proposal, I understood what the protective order would look like. I think the protective order is not the issue. Now the question is, because of the protective order, why the need to separate civilian from non-civilian witnesses and have the civilian witnesses be the Friday before the trial as opposed to a week, when we get the other 3500 material.

There's another wrinkle to that, as well. There are two wrinkles to that. One is that the 24th -- I think actually those two days, Thursday and Friday, the 25th and 26th is also Rosh Hashanah. I won't be in the office those days, which does make a difference in terms of getting the material and being able to prepare. The other is that -- I don't know if the Court is aware of this because this may have just been discovery, which is the government has produced -- "the government" meaning the prosecutors -- had this material previously, but apparently August 26th, the government came into possession of a wiretap of the victim, and that wiretap, I think, was a New York State wiretap. I don't believe it was a federal. Some information came from other counsel. Some information I have asked for directly. But there is a wiretap of the victim, and it is a New York State investigation into that victim. So if I'm going to get that on the 26th, that's too much. I don't know what the government's plans are. I

think it is all, obviously, *Giglio* material I should get now as opposed to simply impeachment material because the wiretap applications could have a whole range of information that could be used for cross-examination that is clearly exculpatory about the victim.

THE COURT: It depends on what the content is, though.

MR. DRATEL: It also could be about the victim and the other two -- it's about the male victim, but it could also implicate the two female victims, or the two other victims who were mentioned in the complaint. They could also be part of this investigation, as well. It could have rather compelling importance in terms of preparing cross-examination that I wouldn't want to get the weekend before.

THE COURT: Just so I understand then what your application is, we have a trial on the 29th, and you're suggesting that you be given all of the 3500 material on the 19th, and you're happy to do it subject to a protective order.

MR. DRATEL: Correct.

THE COURT: I will hear from the government, and let me just preface it by saying I'm interested in, first, what your position is and, also, the reasons for your position, and I just want to urge that the real reasons not have to do with tactics or trial advantage and things of that sort, because I think those kinds of considerations aren't appropriate in a criminal case. I mean we're really trying to do what is right,

and the government has a special duty to do that.

Ms. Tekeei, I will hear from you or your colleague.

MR. ARAVIND: Your Honor, the tactics in this case have nothing to do with a delay of 3500 material. The government has obligations towards the victims of this very violent robbery, and we certainly have some concerns that the production of 3500 material and the identification of those names of the victims could be used by the defendant to intimidate witnesses, to cause harm to them. In violent cases, we typically have protective orders, and I understand Mr. Dratel has agreed to the terms of the protective order, and that's good, but the government continues to have serious concerns about the threats of violence to the victims of this very violent robbery, the male victim and the two other female victims.

THE COURT: What does the protective order provide? Is it lawyers' eyes only? How do you protect the victims with this protective order? What constraints are placed on counsel?

MR. ARAVIND: The protective order, as it has been agreed to by the parties, at least in substance right now, is an attorneys'-eyes-only protective order. The material, 3500 material, can be reviewed by the defendant in the presence of the attorney or paralegal or some other official that is associated with the defense team, but the defendant himself cannot take that 3500 material back into the jail where we have

found that 3500 material often or sometimes gets disseminated throughout the jails and ultimately could be used to harass or threaten or physically harm witnesses. So that's the purpose of the protective order.

In this case, although we have a protective order, the government continues to have some concerns about our victims. We're concerned about the names of those victims, and one possible way to resolve this -- and I have not spoken to Mr. Dratel about it -- is to have production of 3500 material for the victim witnesses that's contemplated before the Friday before trial but have the names of the victims redacted, and then we would provide the names of those victims to defense counsel shortly before trial. That is certainly a possibility that the parties could speak about and see if we can come to a resolution before tomorrow's supplemental motion in limine deadline.

THE COURT: The other thing that I'm wondering about -- and I have no idea whether this is workable or not for Mr. Dratel -- is whether the information be disclosed to him on the 19th, so he can begin to prepare and do what he needs to do short of discussing those names with his client, and then give him the ability to discuss the names with his client as of some slightly later date. But given the holiday on the 25th and the 26th, it seems to me that there aren't really that many days between the 19th and the trial.

Mr. Dratel.

MR. DRATEL: I'm certainly willing to discuss with the government in the next 24 hours some way we could resolve it without the Court having to intervene. However, a couple of things: One, there is nothing in this case specifically that is directed at witnesses in the sense of any conduct by any of the defendants, much less Mr. Chambers. While in the abstract this exists, there are -- it's been going on for decades in the sense of cases in which these disclosures are made because they are statutorily, constitutionally required, and nothing has happened. I don't want Mr. Chambers to be damaged just by some abstract notion that there is danger when, in fact, this case doesn't present it on any factual level in what has occurred in the long period of time. I came in the case about a year ago, but it has been on for about four or five months before that.

In addition, the name of one of the victims has been apparent to us for a long time. Nothing has happened. These defendants have not made any effort to obstruct justice, to put it in its broadest terms, and nothing is going to happen in the next three weeks before trial.

It is a significant impediment to operate under even with the protective order that I have agreed to, which is that Mr. Chambers can't have it overnight. We have to sit with him and go through it and spend real time with him to do that as opposed to the preparation independently and coming back to get

it. So I think that's substantial enough in terms of an impediment, but I'm willing to proceed that way.

THE COURT: Why don't you try and work it out together because it seems to me that you're both much closer to what the real issues are. The government knows how much there is and what's in it. You know what you already know. Perhaps you can work it out. If I do, it will be a blunt instrument; whereas, if you do it, it might make some sense.

MR. DRATEL: I have ideas as to how we might be able to resolve it.

MR. ARAVIND: Just so the record is clear -- and Mr. Dratel may not know this -- an associate of one of the co-defendants did make some statements to one of the victims, and the victims did feel intimidated by that, and so the government does have some legitimate concerns here. We're not just saying it because it happens to be a robbery/kidnapping case. We do have specific concerns relating to this case.

THE COURT: Okay. Thank you. I appreciate that.

So the motion in limine schedule will be adjusted as we just discussed, and I will try and rule on them as quickly as I can, if possible, before the final pretrial conference, and certainly with respect to the timing of production of any 3500 material. Okay.

I think that is everything that is now before me, and so my plan, with the exception of the items where I have asked

for additional briefing, is to close those motions on the docket sheet.

Is there anything else?

MS. TEKEEI: Your Honor, just one small note.

THE COURT: Yes.

MS. TEKEEI: Your Honor had mentioned that you had not seen a copy of Mr. Brown's post-arrest statements. It is included in our motion in limine briefing as Exhibit A. It redacts the victim's name but, otherwise, it is left unredacted. We are happy to provide your Honor with another copy, but I just did want to point that out.

THE COURT: I apologize for missing that. It is your motion in limine Exhibit A?

MS. TEKEEI: Yes, your Honor.

THE COURT: Thank you.

Mr. Dratel.

MR. DRATEL: Just logistically, with the new context of the case, in other words, just Mr. Chambers, whether that affects the government's estimation of the length of the trial.

MS. TEKEEI: No, your Honor.

THE COURT: Can you remind me what that estimate was?

MS. TEKEEI: Approximately one week, your Honor. However, that could change depending on the lack of or the presence of stipulations.

THE COURT: Okay. Anything else?

All right. Thanks very much.

MS. TEKEEI: Thank you, your Honor.

MR. DRATEL: Thank you, Judge.

(Adjourned)